

# AMERICAN INTELLIGENCE.

## ORIGINAL COMMUNICATIONS.

*Of the state of mind necessary to constitute a valid will. Case of Stewart's executors v. Lispenard, as tried and decided in the courts of the state of New York.* By T. ROMEYN BECK, M. D.

ANTHONY LISPENARD, Sen., died in 1806, leaving two surviving sons, Leonard and Anthony,—two daughters, Alice, and Sarah wife of Alexander L. Stewart,—and one granddaughter, an only orphan child of his daughter Helen Bache. His last will and testament, dated Dec. 24, 1802, contains among other matters, the following:—

"My will further is, that the sum of seven hundred and fifty dollars be allowed and paid to my beloved wife Sarah, every year during her natural life, either in half yearly or quarterly payments, as she may elect to receive the same, to commence immediately after my decease, but which provision is intended to be in full and lieu of her dower. And as it has pleased Almighty God that my daughter Alice should have such imbecility of mind, as to render her incapable of managing or taking care of property, my will further is, that she be allowed for her maintenance the sum of five hundred dollars annually during her natural life, and that my executors hereinafter named pay out of the income of my estate to my said daughter Alice, the said sum of five hundred dollars, in half yearly payments, to commence immediately after my decease."

The remainder of his estate was to be equally divided among his other children and his granddaughter.

In January, 1818, Anthony Lispenard, jun., died unmarried, intestate and without heirs, whereby his sister Alice succeeded to one-fourth of his estate, or one-sixteenth of the estate whereof her father died seised and possessed.

In January, 1836, Alice Lispenard died, aged 55, leaving the following will, dated August 27, 1834.

"I give and devise all my estate, real and personal, whatsoever and wheresoever, whereof I shall die seised or possessed or entitled unto, of what nature and kind soever, to Alexander L. Stewart, his heirs, executors, administrators and assigns forever, to his and their own use and benefit, and I hereby constitute and appoint him sole executor of this my will, and in case of his decease before me, then I give, devise, and bequeath all my said estate to his daughter, Sarah Skillman, her heirs, executors, administrators and assigns forever, to her and others own use and benefit, &c. &c. This disposition being made by me in consequence, and as a testimony of my remembrance of the care and kindness manifested towards me by my said relatives, Alexander L. Stewart and Mrs. Skillman."

On Mr. Stewart, the executor above named, asking probate of this will at the Surrogate's Court for the County of New York, its validity was contested by several of the heirs-at-law, and the state of mind of the deceased during her whole life, but particularly at and near the time of making the will, became the subject of investigation.

I propose analysing the testimony according as the witnesses were acquainted with her from childhood onwards; but previous to this, it may be as well to give the depositions of the witnesses to the will, both of whom were physicians, and in attendance during her last illness.

*Dr. John Neilson* saw *Alice Lispenard* execute said will by making her mark and acknowledging it to be her will, and he witnessed it in her presence, at her request. She said she wished the will executed in favour of her brother. He considered her competent to make a will, and she did not appear at that time to be under any restraint. The testatrix could not write, she was not aware whether she could read or cypher. She attended to household concerns (residing in the family of *Mrs. Stewart*) so far as to transact any errand on which she was sent, very correctly. He often conversed with her, but did not find her of ordinary understanding, and believed her to be a weak woman, but considered her competent to take care of her own property, and he further explained the previous remark by saying that she was a woman that understood perfectly well what she was doing, but of weak judgment. She never entered into much conversation. Her memory was good, and even extraordinary, because when questions were asked concerning things that occurred a long time back she answered correctly. "During her last illness, when she was attended by *Dr. Hunter*, I was called in as her physician to see her, I think it was the day previous to her death; I asked her how she did, she said she had been very sick, and was so then, and that *Dr. Hunter* had been giving her medicine, and she told me what she had taken, and what had been done for her several days past, and it was stated by those around her, that her account was correct."

*Dr. Abraham T. Hunter* had known the deceased for ten or fifteen years, and had seen her during that time almost every day, and for the last six or eight years had paid particular attention to her, as an observer of her capacity. He conversed with her frequently, but not for any length of time. He confirms all the particulars attending the execution of the will, as given by *Dr. Neilson*, and subscribed his name as a witness at her request.

When he first became acquainted with her, he was led to suppose from her manner that she was an idiot, but after paying more attention to her and getting into conversation, he found her memory good and her ideas well arranged. She was very near-sighted, and this made her awkward in her appearance, and she was also very reserved and retired, so that it "became necessary to draw her words out of her." "Three days before her death, she said she was going home. I asked her what she meant. She said she was going to her God, and felt perfectly happy in her mind. She was then much exhausted, and I said nothing more to her."

As to the state of mind of *Alice Lispenard* during childhood and youth, the following witnesses testify.

*Mrs. Satterthwaite*, a near relative of the family, had known her from her infancy. From early life she needed a person to take charge of her, she was incapable of assisting herself; she required washing, nursing, and putting to bed the same as a child, until she was 22 or 23 years of age. Her general appearance was that of an idiot; she had a silly and unmeaning laugh when spoken to, with a foolish manner of hanging her head, and of answering a question. She could neither read, write, or sew. Attempts were made in vain to instruct her from seven to twelve years of age; she was very high tempered, and occasionally violent and abusive in her language. She never joined in amusements with the rest of the children after she was grown up; she had known her to dribble at the mouth.

This witness appears to have seen the deceased only occasionally after 1813, and all attempts to hold conversation with her proved fruitless.

*James Davidson*, aged about 80, held some lots of *Mr. Lispenard*, adjacent to the garden of the latter, and which he cultivated as a flower garden. He was allowed free access to the premises of *Mr. L.*, and visited in his family. The manners of *Alice*, then a child, were very reserved and shy to strangers, but after a few meetings she became very familiar with *Mr. Davidson*. She was much indulged, and allowed to do as she pleased. He frequently saw her in the garden and greenhouse of her father, and she would converse on the different plants, of which there was a great variety, and speak of their beauty. It was the opinion both of *Mr. and Mrs. Davidson*, and they had repeatedly conversed on

the subject, that if Alice had received an ordinary education and been properly managed, she would have been a very shrewd girl.

*Elizabeth Brower*, aged 52. Alice and herself were playmates together. Alice was at this time about seven or eight years old, and the witness does not recollect any difference between her understanding and that of other children, nor was she more watched or looked after. There was a female teacher employed in the house, but Alice was much indulged and neglected. Mrs. Brower again saw her after an interval of ten years: "she inquired how I had been, about my family, and about my brother. She asked me regular questions, and I answered them. She appeared to be rational and intelligent."

*Jane Martin*, at the age of nine was a playmate of Alice, then two or three years older, and did not at that time perceive any difference in point of intellect between her and the rest of her playmates. She was exceedingly indulged by her father; any thing she wanted she must have, and if she cried, he would coax her. Her temper was sullen and obstinate; she was allowed as much beer as she wanted, and would send the servants for it. She went to Mrs. Sibbly's school for one or two quarters during the warm weather with her sister (afterwards Mrs. Stewart).

In 1815, my daughter went up to the old house, where Alice was then boarding with Mrs. Godwin: "they told Alice it was my daughter, and she sent me some flowers by her."

*Jemima Vreeland*, aged 54, was, during childhood, in habits of constant intercourse with Mr. Lispenard's family, and for two years went to school with his children, Sarah and Alice. The latter could play and learn her lessons, when she chose, like the rest. Witness was in the same class with her. She could spell and read some, but only in the spelling book; she would frequently neglect her lessons, and Mrs. Montagnie (the school mistress) would make her sit down on a seat and learn her lessons; this she did, "unless her father interfered to prevent it, and that he often did." Witness also testifies to seeing her write large hand, and sew pocket handkerchiefs and towels. She was obstinate and self-willed, and her father always appeared to give way to her. Each of the three last witnesses confirm the statement of her being near-sighted in childhood.

*William Baldwin*, a coloured man, was a servant in the family of Mr. Lispenard for ten years prior to his death, and he remained four years subsequent with his son Leonard. Alice was, when he first went there, about fourteen or fifteen years old. She differed entirely from the rest of the children; she did nothing, took no part in any thing about the family, and did not appear to be competent to do any thing. She had always a female during the lifetime of her father to take care of her, to dress, undress, and attend to her room. Her appearance was different from that of other young ladies, and in his opinion, she had no understanding at all. At about twenty years of age, she began to drink to excess.

*Phæbe Thompson*, a coloured woman, servant in the family, first knew Alice when she was about sixteen years old, and the witness fifteen. Witness continued to work in the family until the old people died, and during all that time had constant opportunities of seeing and observing Alice. She was in the habit of attending to the family affairs, when asked to do so, "would tell her mother what had come from market, and her mother would give her directions concerning dinner, which she would convey to the kitchen;" the household at this time consisted of about thirty-five persons.

It was during this period that Alice became intemperate. Every day for years, she would begin to drink about ten o'clock and continue until night. From ten until one was the worst time, and if crossed, she was violent in her temper. But she continued carrying messages to and from the kitchen (which was at some distance from the house) as before. Her parents put no restraint on her habit of drinking, but rather encouraged her in it. For some time she drank only beer, but when the brew-house was done away with, it was either brandy or spirits. When in liquor she used to dribble at the mouth, and she frequently reeled or staggered. The servants, however, even at this time, attended to her orders or directions the same as they would to any other member of the family. She used

to bring the clothes to wash, would take them off the lines, and "she would always let us know if a shower was coming, that we might take in the clothes." She was much indulged by her parents; no one dared to control her, and she had frequent differences with her brother Lisenard, who, with his family, resided with her father.

This witness again saw Alice for several months during the last years of life, and while she was residing in the family of Mr. Stewart. The dribbling was entirely gone; her temper, although still cross when displeased, was greatly improved; she manifested much attachment to witness as an old servant of the family, and remembered all those who had formerly belonged to it. She assisted Mrs. Stewart in her family affairs, and was more particular as to her dress, and the arrangement and order of her room than she had ever been.

*Harriet E. Freeman*, aged about 43. Witness's mother was the housekeeper of Mr. Lisenard for nine years: during that time Mrs. Freeman resided in the family. She was about twelve years old when her acquaintance with Alice commenced, and who was probably about twenty. Alice was considered silly; she would cry on the most trifling occasions; was not allowed any money, nor to go out alone; she generally sat at the window, day and evening alone, and no person conversed with her, nor did she converse with any body. She had no knowledge of the value of money or of property.

I shall presently state Mrs. Freeman's testimony as to Alice's condition at a more advanced period of life.

*Isabella Lee*, went at two years of age on the farm of Mr. Lisenard, and remained there until she was sixteen. Alice was probably from seven to nine years older. Mrs. Lee was in the constant habit of playing with her and her sister at her father's house. She joined in the usual sports, and being the oldest, often took the lead in them. She went to school with the other children to Mrs. Montagnie (in her father's house). She was not an attentive scholar, but could read in the spelling book; she sewed as the rest of the children sewed; was very obstinate; much indulged; very near-sighted; and was allowed free access to wine, and used it too freely. Witness met Alice after a long interval, some four or five years ago in a stage in New York, and asked if she knew her: she replied yes. "I asked her if she knew my name: she said yes, my name used to be Bella Holloway, which was my maiden name."

*Mary Bleecker* was a relative of the Lisenard family, and was intimate there when a child, and also in after years, always considered Alice as an idiot, and did not deem her capable of conversation, and never heard her say more than yes and no. Alice was always quiet and still, and when a child, did not join in the usual sports, but usually kept aloof and would not look on. Mrs. Bleecker's opinion of her being an idiot was formed from her manner, silence, and appearance. Witness has not been in her company since her father's death.

*Elizabeth Stanton*, aged 68, had been an inmate in the family several years when a child, as her mother was a servant in it. As Alice grew up, witness noticed that she was not like the other children, she took no part in their diversions.

I might quote the testimony of other witnesses as to this period in the life of the deceased, but it would not furnish any additional facts or circumstances.

From 1800 to about 1814, the following may be mentioned. *Charles Graham*, Counsellor at Law, was in the habit of visiting the family, and occasionally saw Miss Alice. He formed the opinion that she was a person not of vigorous intellect, but perfectly competent to the ordinary transactions of life. He positively asserts that she was not considered an idiot in the family. "I should not have relied on her judgment as to buying and selling real estate, but as to any article she might want for her personal use, I think she was perfectly competent. I conversed with her within six or eight months of her death, and found no variation of her intellect from what it was in her father's time."

*Mrs. Clerke* and *Mrs. Ducachet*, both relatives, speak of her as being considered of an imbecile mind by the family and treated as such. Neither of them

appears to have ever held a conversation with her. They considered her incapable. Her countenance was very vacant; her posture awkward when spoken to; she would giggle and laugh in a silly manner.

*Mrs. Gavitt* knew Alice from 1800 to 1806, as her father lived opposite to Mr. Lispenard's. "I was often in the garden and yard, and have been in the house, but not often; the girl Alice used to attract my attention, because she acted so very foolish; she would stand for a long time and look at the sun, as if she was in a kind of stupor and amaze; she appeared to be entirely void of intellect at that time."

In the opinion of the Surrogate, it is stated that on the death of her father in 1806, she resided with her brother Leonard until 1813, when she was put out to board with them until 1827. The testimony as to this period is important.

*Harriet E. Freeman.* Alice boarded with her about two years. She knew nothing about sewing, nor could she be taught it; she could partly dress and undress herself, but "we generally put her cap on and fixed her dress." Alice was never suffered to go out alone in the street; she was occasionally taken to church, but took no notice of the exercises. Witness had also attempted in vain to teach her the Lord's Prayer. She was very passionate, often for a mere trifle, and would cry childishly. She would eat voraciously, and whatever was put on her plate; was allowed four glasses of wine daily. On the cross-examination, witness stated, that when endeavouring to teach her the Lord's Prayer, Alice sometimes would laugh, and they could not make her speak, and again she would say she did not want to. At other times, she would begin to repeat and then break off with the same expression.

*Mrs. Burtzell*, a sister-in-law of Mrs. Freeman, and often at the house while Alice was boarding there, never heard her attempt to speak several sentences connectedly. She was always helped at table, and Mrs. B. never saw her desire or ask for any thing. She would eat too much, unless restrained.

*Mr. Browning*, a boarder at Mrs. Freeman's, confirms most of the above statements.

*Elizabeth Stanton.* Alice boarded with her mother, Mrs. Godwin, for one year, (probably 1816 or 1817.) She was not thought capable of taking care of herself, and therefore was never left alone. They would sometimes put sewing in her hands, and she would sew a little and then throw it down and say she would do no more. Witness did not consider her competent to purchase articles; believing that she did not know the value of money or of property, and hence, did not suppose her capable of making a will. She was sullen in her manner and appearance, and never entered into conversation.

*Helen Gray.* Alice came to board with her mother, Helen Taylor, in 1817, and continued there until 1827. Mrs. Gray resided in the family during upwards of four years of the above term, and visited frequently during the remainder. Mr. Stewart, who paid for her board, directed that Alice should not be suffered to go into the street alone, and after some time, requested that she should be directed to carry up wood or water, in order to exercise herself. She did so when ordered. She usually sat still by the window or walked about the room. Her temper was violent; she once struck witness in the face with her hand, and at another time, when she was alone with the children, choked witness' little boy until he was black in the face. Mrs. Taylor, when she behaved ill, would send her to her room till she promised to behave better. She would stay there until sent for, and then if asked whether she would do so again, would say no, but never came voluntarily to make apologies. When any trifling thing did not suit her, she would swear. She was fond of cake and sweet things, and Mrs. Taylor would, when she went out, tell her that if she behaved well she would bring her something, and cakes and candies were always brought for her and the children. If this promise was not fulfilled, she would cry and make a fuss. She would pick the ends of her sleeves and apron strings to pieces, and rub her handkerchief in pieces. Mr. Stewart sometimes visited her, and would say to her, "aunt Elsie, are you a good girl?" She would just put down her head in her neck and laugh; sometimes she would say yes, and sometimes she would not say any thing; she generally laughed when any one spoke to her. She ate

greedily, and was always helped to her food, which was cut for her. She generally sat stooping forward. In the opinion of witness, she did not know the value of money.

*Henry B. Taylor and Maria Taylor*, the son and the daughter-in-law of Mrs. Taylor, and resident in her family, confirm the testimony of Mrs. Gray in every material respect.

*Mrs. Warner* lived for two years next door to Mrs. Taylor, and saw Alice almost daily. She was very reserved to strangers, but conversed freely and frequently with witness, and several times during Mrs. Warner's absence from home, took charge of her infant child, six months old. She was frequently left with it an hour at a time. Mrs. Warner often saw Alice dress herself, and on one occasion, was with her at a store in Broadway, and saw her buy thread, needles, and pins, and pay for them. Some years afterwards witness saw Alice at Mr. Stewart's, when she recognized her, called her by name, and asked after the child, of whom she had been so fond.

*Mrs. Murden and Mrs. Vincent*, also knew Alice when boarding at Mrs. Taylor's, and they corroborate the testimony of Mrs. Warner, as to the conversing freely with her, and her ability to dress and undress herself, and the care which she took of her clothing.

The present will be a proper place to mention that, in consequence of the proposed conveyance of some property by Alice, the opinion of certain physicians was taken as to her mental capacity. And in the appendix to the testimony, the certificates of Drs. Neilson, Stringham, Guy C. Bayley, Barrow and Graves are given. They unite in stating that they had frequent opportunities of visiting and conversing with Alice, and that in their opinion, her mind was sufficiently strong to direct her in the ordinary occurrences of life, and that her unfavourable appearance was rather to be attributed to neglected education than to mental incapacity. These certificates appear to have been given about the year 1815.

Drs. Bayley, Barrow and Graves, were examined before the Surrogate. The former stated, that if his opinion was now to be formed from further observations, he would be disposed to allow her less of mental capacity than he formerly did. She did not appear to know enough of the nature and value of property. The other medical gentlemen adhered to their former statement.

As already hinted, Alice was taken into the family of Mr. Stewart about the year 1827, and remained a member of it until her death in 1836. She was treated with great kindness and attention by Mrs. Skillman, daughter of Mr. Stewart (afterwards the wife of the Rev. Charles S. Stewart). She was gradually weaned from her habits of intoxication, and became in some degree an active member of the family. In comparing and analysing the testimony concerning her at this period, I omit a notice of that of James Watson Webb, Rev. Charles Stewart, and his wife, and the Messrs. Satterthwaite's, as their near relationship and interest in the disposition of her property, might be supposed to give a shade of colouring to their opinions. Of the many witnesses presented, I notice the following.

*Isabella Henderson* resided as seamstress and nurse in the family of Mr. Stewart, during part of 1834-5. She was engaged in washing and dressing Alice, and always took her to be an idiot. Her conduct was so silly, and her temper outrageous. Witness never knew her to hold any connected conversation, and further states her inability to read or write, and her ignorance of the value of property. Alice was treated disrespectfully by the servants, but with kindness by the members of the family. If she behaved ill, her victuals were sent to her room.

*Sarah Ann Fisher* was also a servant in the family during part of 1834-5, and had particular care of Alice during that time. Alice required assistance to dress herself, but not to undress. She was uneducated, and witness was unable to make her understand religious things. When in a passion, she would sometimes strike persons, and was then sent to her room, and her meals were sent in to her. Sometimes she was very penitent for this, and would come to the persons she had offended and ask their pardon. She always kept her drawers of clothes in

order, and when any required repairing, she would show witness what she wanted to be done. When Mrs. Stewart was absent, she had the keys of the pantry; and if any thing was wanted, would give it to those who asked her kindly, but not without hesitation. To those who were sick in the house, she would come perhaps three or four times a day, and ask them how they did. She was attentive to what she knew she had to do; and if in a good humour, would perform it, but sometimes she would get into a violent passion. She would but seldom joke; she would often repeat simple childish stories. Witness considered Alice void of understanding, and that she did not know right from wrong.

*Rev. Duncan Dunbar* had been acquainted in the family of Mr. Stewart for eight years, and was in the habit of conversing with Alice. Her answers and remarks were pertinent and sensible, and thus struck witness as being in contrast with her appearance, which was awkward and wanting in politeness. Her reserve wore off, and he positively asserts, that he never saw her do any act, nor say any word that would indicate mental imbecility. Mr. Dunbar was absent for a few months in Europe, and on his return called at Mr. Stewart's. He found Alice alone in the parlour. As soon as he spoke she recognized his voice, shook hands, and congratulated him on his return, inquired as to the health of Mrs. Dunbar, and expressed regret that the ladies of the family had driven out. At one period, Mr. Dunbar supped by request, every Sunday evening for five or six months at the house of Mr. Stewart, and conducted family worship. He never on these occasions saw any thing about Alice to change the opinion above expressed.

*Edward V. Price* was a clerk in the office of Mr. Stewart in 1834-5. Alice was in the daily habit of coming about matters appertaining to the family and household, and on such occasions, addressed herself to witness, and exhibited a perfect knowledge of matters, and employed correct and proper language. She had a good memory, and conversed with propriety on ordinary occurrences.

*Sarah Sargeant*, was employed for several years in Mr. Stewart's family, in mantua-making and other sewing. Witness passed many whole days in the same room with Alice, and sometimes rested at night in the same room. She conversed freely and sociably with witness on ordinary affairs, and never evinced any thing indicative of imbecility of mind. Her memory was good, and she was a keen observer. She would dress herself as well as other females generally do. She was gradually weaned from the habit of drinking, until at last, she abstained entirely, saying she did not want it, and this with the kindness shown to her by the family, had a very manifest effect on her attention to dress and her behaviour. She ate at table with the rest of the family, and cut her own meat.

*Patrick Ward, Michael Mullen, Rhoda Griffith, Betsy Stockton*, servants at various times in the family, confirm the above statements. Alice was manager of the house when the other ladies were out; she had the keys of the pantry, and gave out such articles as were wanted; gave directions when messages were to be taken; spoke to servants when articles were out of place; and when it was desired to purchase things offered at the door, would ask the price and go and procure money to pay for them.

*Hannah Norman*, housekeeper, and *Theodosia Van Dalsen*, seamstress, are equally favourable in their opinion of the mental capacity of Alice.

*Thomas Brown*, house painter, *Ebenezer Smith*, mason, *John Robinson*, carpenter, *Samuel Spence*, workman, and *Ezekiel Yoemans*, purchaser of flour, vegetables, &c. for the family, all appear to have known and conversed freely with her, and found her of sufficient knowledge. The mechanics state expressly, that they frequently received directions from her, as to what job it was wished they should do; and uniformly found them correct. Mr. Yoemans was in the habit of receiving money from her, which she procured from the clerks, and thus transacted the affairs connected with his occupation.

Among visitors who were quite intimate in the family, *Moses Hoyt* and *Horatio Averill* were presented as witnesses. The former states his surprise at her com-

mencing conversation with him, at a time when he supposed her to be an idiot (1834), and was so informed. He continued his acquaintance with her, and speaks favourably of her state of mind.

The testimony of *Jane King*, who appears to have been a servant in the house and an attendant upon Alice during the last eight months of her life, is not materially variant from that just noticed; although she states that Alice did not appear to understand money matters. In some things she appeared quite smart, and to others quite insensible.

*Thomas Edmonds* was the confidential clerk and book-keeper of Mr. Stewart nearly fourteen years, and during nine of these, Alice was employed as the messenger. The office was in one house, and Mr. Stewart resided in the next one, but there was a communication between them leading to the office. Alice came sometimes daily, or three or four times a week to get money to pay bills, telling Mr. Edmonds particularly what it was for, and the part that was to be charged to herself, and that which came under the head of family expenses, &c. She appeared also to pay much attention to domestic matters, whether servants had executed errands, &c. It was the object of Mr. Stewart to keep her so employed, as to give her suitable exercise, Alice being a large and corpulent woman. Mr. Edmonds sometimes left her in charge of the office, and on his return, she would mention what had occurred. She did not need a person to look after her beyond what her years and near-sightedness might require. Witness conceived her competent to make a will.

The only remaining witnesses whose testimony I will refer to, are *Dr. John W. Francis*, and *Dr. James M'Donald*. They were respectively asked, whether when a person has been born of a feeble mind, they have ever known a new development of intellect after the age of forty. They replied in the negative, they do not think such an occurrence probable. The following question was also put. Suppose a person born with a feeble mind, has been permitted to acquire habits of intemperance in early life, and has continued in these habits for a long series of years, and then that they are entirely corrected, and pains are taken to instruct the individual, may not the mind of such person in after life exhibit more intellect than it did before? To this, Dr. Francis' reply was, "yes, the history of inebriation shows it;" Dr. M'Donald's, "It is possible, but I should fear not, because disease from the long use of ardent spirits might be superinduced upon a weak brain."

The testimony, of which the above is a brief, but I trust a faithful analysis, occupies an octavo volume of nearly three hundred pages. The Surrogate (James Campbell, Esq.,) made a decree on the 26th of July, 1838, *refusing to admit the will to probate*. His opinion is given in full in the 26th volume of Wendell's Reports. He reviews the life of Alice according to the three periods already noticed, whilst she lived in her father's house, the time when she boarded with strangers, and that during which she lived in the family of her brother-in-law, Mr. Stewart.

Of the first, he remarks, that the attempt to instruct Alice failed, and the extraordinary and mortifying fact was disclosed that she was incapable of being taught to read, and much less to write, and her parents were obliged to abandon the attempt as altogether hopeless. As she passed from adolescence to womanhood, he observes that her mental defects became more apparent and striking, and he refers to the testimony of Mrs. Satterthwaite, of Baldwin and of Elizabeth Stanton, as far more decisive and positive than that of Mr. Davidson, Mrs. Lee, Mrs. Brower, Mrs. Martin, and Mrs. Vreeland, whose means and ability of observing and judging of the actions and character of Alice were certainly inferior to those produced on the other side. The will of her father is quoted as an evidence of his solemn and deliberate opinion. He doubts also, whether the habit of too

free indulgence in liquor was so great, or so long continued, as to produce any marked effect on her mind.

The testimony of those individuals with whom she boarded, and who were residents with her, must outweigh that of casual acquaintances and visitors.

The Surrogate also lays great stress on the value of the testimony of the servants in the family of Mr. Stewart, (Fisher, Henderson, and King,) and attaches but little to that of "the physicians, clergymen, lawyers, seamstresses, washerwomen, carpenters, masons, members of his own family, and occasional visitors at his house. Vague generalities and opinions, (he observes,) accompanied by no specific facts, actions and circumstances, characterize this testimony on the part of the executor; and when properly weighed and analysed, will be found to amount to little more than this, that Alice had her prejudices and attachments, and was not insensible to neglect or attention; that she could remember persons whom she had not seen for a long time; that she could carry and bring back messages with accuracy and a kind of mechanical precision; and that she could make and answer inquiries and questions on trite and familiar subjects, such as the state of the weather and of health. Now the ability to do all this, and even more, is not incompatible with great imbecility of mind," and in corroboration, he adduces the *dicta* of Sir John Nichol in *Ingram v. Wyatt*.

The fact of the employment of Alice in a daily round of drudgery imposed on her, is considered as a strong and conclusive proof of want of understanding, and the injustice in the disposition of her property is also dwelt upon. His final decision was, that Alice Lispenard at every period of her life was intestate for want of understanding, and the instrument propounded as her last will and testament was rejected.

The cause was affirmed *pro forma* in the Circuit Court, the next in judicial order, and from that carried up to the Chancellor's. That officer, in his opinion, remarks, that after a "very careful examination of all the testimony, I am perfectly satisfied that children in general at the age of eight years, who have had the same care bestowed upon them that Alice Lispenard had during the life of her parents, and particularly during the first twelve or fifteen years of her life, would be as competent to understand the nature and value of property, and to dispose of it by deed or will as she was at the time she made her mark to the instrument propounded as her will in this case." He also considers the declaration of her father, as made in his will, to be a strong and controlling circumstance. The decision of the Surrogate was constantly affirmed.

The cause was finally argued and decided in the Court for the Correction of Errors, in 1841. C. W. Sanford and Willis Hall (Attorney-General) appearing for the appellant, and B. F. Butler for the respondents. It is remarkable that no judge of the Supreme Court gave an opinion on the case, and that the decision of it constantly remained with the *lay members*, as they are called. The decree of the Chancellor was reversed by a vote of 12 to 6. The opinions of G. C. Verplanck and J. B. Scott, senators, and both for reversal, are published in detail. I may briefly notice some new and interesting points considered by the former.

Mr. Verplanck assumes and asserts the principle, that the right of testamentary bequest is not a mere institution of positive law, but a natural right, subject to the restrictions and regulations of civil legislation, yet not

its mere creature. According to the statutes of the State of New York, all persons except idiots, persons of unsound mind, married women and infants, may devise their real estate, by their last will and testament duly executed. Now the line of unvarying authorities, shows that in legal intent the natural defect of mind thus excluding persons from the ordinary rights of society does not consist in a limited degree of intelligence, but in an entire absence of it. An idiot is one, according to Fitzherbert, "who has not any use of reason, has no understanding to tell his age, who is his father or mother, what shall be for his profit and loss." Again the term *non-compos mentis*, or of unsound mind, imports not weakness of understanding, but a total deprivation of reason. "The ancient rule is thus expressed and reiterated by the latest and best text writers on this subject"—*Shelford on Lunacy*. "A person being of a weak understanding, so he be neither an idiot nor a lunatic, is no objection in law to his disposing of his estate. Courts will not measure the extent of people's understandings and capacities; if a man, therefore, be legally *compos mentis*, be he wise or unwise, he is the disposer of his own property, and his will stands as the reason for his actions."

True, the courts have in many cases, made the bequests of the imbecile void, but not on account of the general and positive disability of the party for all similar acts, but because of the relative character of the will or contract itself, and of all the external circumstances in proof, to the mental capacity of the party. The whole transaction taken together, with all its facts, of which the proof of mental weakness was one, showed that the consent, the very essence of the act, was wanting to *that particular act*.

In applying this view of the law to the case before him, Mr. Verplanck dwells on the numerous witnesses, who have spoken favourably of a measure of understanding in Alice, while others, he concedes, concur in representing her as silly and stupid. If, however, we regard the whole evidence, we shall find that the testimony of those who represent her as having been merely a dull and imbecile, but not an idiotic person, much outweighs those who depose to the lowest grade of intellect, both in numbers, station, education, and intelligence; and it is positive and *affirmative* in its character.

The clause in the will of her father is to be taken as it is expressed. He considered her incapable of managing and taking care of property. If he had deemed her an idiot, the payment of the annuity would have been directed to be made to trustees for her support. In the words of Judge Washington, "The capacity may be perfect to dispose of property by will, yet very inadequate for the management of other business, as for instance, to make contracts for the purchase and sale of property."

Whatever may be the opinion of the reader on the merits of this case, there can be no doubt of the talents and ability with which Mr. Verplanck (as in numerous other cases before the Court of Errors) advocated his views.

*Case of induction of Premature Labour.* By J. V. HERRIOT, M. D., of Cannonsburg, Washington Co., Penn. [Communicated in a letter to C. D. Meigs, M. D., dated Dec. 26th, 1842.]

Mrs. A., thirty-five years of age, good constitution, short, compact, bony

frame, pelvis natural figure, but (judging by the finger,) under the ordinary size in all its diameters, with a copious development of adipose tissue—has had four living children without the aid of instruments of any kind; her labours, however, she says were very severe. Since these she has had three still-born. In the first of these cases I attended her—a vertex presentation, with prolapsus of the umbilical cord (the cause of its death); a severe and protracted labour. In the second case vertex presentation, prolapsus of the cord; the labour protracted and severe, and the head having engaged but partially in the superior strait, her delivery was completed by the application of the forceps. In the third another physician attended her, and, as I am informed, her labour continued with violence for fifteen or sixteen hours, and the head not having engaged in the superior strait, the perforator was resorted to, and her delivery thus accomplished. These means became necessary in consequence of the size of the fetuses, each one being of increased magnitude. Some ten or twelve months after this, she became pregnant again, and was very anxious about her own and her infant's safety. At this period I recommended to her Dr. Holcombe's method for diminishing the size of the fetus, which to her was not very acceptable. Having seen her husband on the 4th ult., I prescribed best olive oil, a wineglassful two or three times per day—*pro re nata*—and promised to visit her as soon as convenient. Accordingly on the ninth I visited her and found her much agitated on the subject of my call. I then proposed to her the induction of premature labour between the seventh and eighth month of gestation: setting forth to her the prospect of alleviating her sufferings and saving the life of her infant—her own dangers also were not forgotten. She had the matter in solemn and serious consideration, till the 5th inst., when I visited her again, and she accepted the proposition I had made. Feeling that a greater degree of responsibility rested on me in this than in an ordinary case, I requested that another respectable physician be present on the occasion. Accordingly my respected friend Dr. D. S. Stephenson, of this place, on the 8th inst. accompanied me to her residence, some five or six miles distant; and in the evening, between the hours of six and seven o'clock, my friend and self having made an examination, *per vaginam*, found the parts disposed to harmonize in the undertaking—the mucous surfaces lubricated with mucus, and the *os tincæ* soft and disposed to dilate. The writer then ruptured the membranes by introducing a female catheter through the *os tincæ* and puncturing them with a wire: my friend having first given his assent to the propriety of the operation.

At the instant a portion of the liquor amnii escaped, and continued to discharge at intervals for several hours—contractions of the uterus were experienced shortly after the operation, but so slight, that during Thursday and Friday nights she enjoyed several hours refreshing sleep. Saturday morning, 5 o'clock, she awoke with pain, which continued regularly with increasing strength and frequency. Nine o'clock, the *os uteri* was dilated so as to admit the point of the fore and its fellow finger. At this period the presentation could not be satisfactorily ascertained. But, after the lapse of two or three hours, it was recognized to be a breech, with the right hip to the left acetabulum, and the left hip to the right sacro-iliac symphysis. At the next examination, the left elbow was discovered in connection with the left hip—which being pressed back in the absence of

pain, the breech came down and occupied the superior strait exclusively. This intruder, however, made its appearance frequently in the course of the labour, and was somewhat troublesome; requiring strict attention to keep it above the brim of the pelvis. At this period, to my mind and that of my friend, the prospect for the life of the child was gloomy; but after the breech fairly engaged in the pelvis, the pains became brisk and efficient, so that by five o'clock in the evening she was delivered of a living vigorous female infant, which from its appearance (we presume) would have more than equalled in magnitude, any of its predecessors,—after a gestation of seven months and seven days. We take her own reckoning, which, she says, she knows is accurate. It is scarcely necessary to remark that had this been a vertex presentation, the labour would have been comparatively easy, and of much shorter duration. But from what we know of this woman's former labours—the size of her children—her contracted pelvis and diminished strength, had she been permitted to go the full term of utero-gestation her delivery would have been a solemn and serious task. But as the method adopted in this case has fulfilled the most sanguine expectations of my friend and self, we are truly gratified—and the husband and wife, friends and relatives are all thankful that Divine Providence has smiled upon the means used to alleviate the mother's sufferings, and save the life of her infant; both of whom are doing well.

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*Case of Twins in which both placenta were expelled previous to the delivery of the last fœtus, without consequent hæmorrhage.*—By SAMUEL TYLER, M. D., of Frederick, Md. [Communicated through Prof. Hodge.]

My father was requested to attend a female in labour on the morning of the 6th July, 1843, 10 o'clock, A. M. She had been delivered by her mistress two hours before (8 o'clock, A. M.) of a fine child. In a reasonable time after the expulsion of the fœtus, the placenta was discharged. The mistress observed that the placenta presented an unusual appearance and that the cord seemed larger than natural, but it was not until she had divided the funis, that she discovered there was another fœtus "in utero," and that she had mistaken a double placenta and a double cord for an enlarged condition of those two important organs.

When my father arrived, he made an examination per vaginam and discovered that the remaining fœtus presented the left shoulder. It was then more than an hour since the cord had been severed, and of course the life of the fœtus destroyed. In addition to the unfavourable circumstance of a shoulder presentation, there was firm hour-glass contraction of the uterine fibres around the body of the child. Having, in conjunction with the means usually calculated to relieve so firm a contraction of muscular fibre, made many unsuccessful efforts to turn the fœtus in order to convert it into a footling or breech case, he sent for me. On my arrival, I soon discovered (indeed it was for that purpose he sent for me) that embryotomy offered the only relief to the suffering female. After making several equally ineffectual efforts at turning, I proceeded to perform the operation, which consisted in removing with the scalpel the left arm, at the shoulder joint, and then opening the thorax by a puncture or incision between two of the ribs, and thus partially evacuating its contents. The delivery was effected—after compressing the thorax and abdomen, by carrying up the right hand to the breech, passing the finger into the rec-

tum, bringing down the breech, and then finishing the delivery "*secundum artem*."

The patient was placed in a comfortable position, and every precaution taken to prevent or rather to relieve what seemed inevitable, viz: copious hæmorrhage; hour after hour passed by, the female continued comfortable and improving, and until the present time, more than four weeks since the delivery, not the slightest appearance of hæmorrhage has taken place, the abdomen is natural in size, and the female entirely recovered, and is nursing her infant.

Observe the peculiarity of such a result. Here is a case of twins, one child delivered easy and natural; both placenta coming away, thus leaving a double placental surface exposed, the cords are divided by mistake, and, consequently the vitality of the remaining fœtus destroyed—it presents under the most unfavourable circumstances, the shoulder being the descending portion—it is impossible to move or turn it, owing to rigid hour-glass contraction—remedies best calculated to produce relaxation are made use of, but not until embryotomy is performed is the patient relieved.

Here we have a case not merely of simple prævia placenta, but a double surface exposed, there having been two placenta; the fibres of the womb, first in a state of rigid contraction, then the irritation consequent upon the performance of embryotomy, and lastly a state of excessive relaxation, and still not a drop of hæmorrhage, and the female entirely recovered. I present this case, so interesting in its nature, so apparently formidable in its character, hoping that those under whose observation it may fall, will be induced to investigate the cause of so favourable a result.

I may be allowed here to add the great importance of an obstetrician always being in attendance upon a parturient female, no matter how simple the presentation, or how favourable the circumstances of her case. Had a practitioner been present at the commencement of the case just related, the life of a human being might have been saved, which was certainly sacrificed to ignorant midwifery—though the result to the female was as fortunate as could possibly occur.

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*The Spontaneous Expulsion of a large Polypus, two days after the delivery of a fine healthy male child.*—By JOHN DAVIS, M. D., of Smithville, Abbeville District, South Carolina.

May 23d, 1843: I was summoned to Mrs. C——, ætat. 32. When I arrived I found her to have been in labour twelve hours, with her fifth child. The presentation was natural; and the soft parts well dilated. The pains were, and I was informed, had been, pretty strong, for three hours previous to my arrival, yet they were irregular, intermitting, and of little effect. She was greatly exhausted by the continuance of her sufferings, and the violence of her exertions, and a serious question arose in my mind what I should do. If we would be governed by authors in general, it was a case in which the ergot might have been given with good effect. Considering the only difficulty, however, to depend upon the irregularity of the pains, I resolved to wait an hour or two, and see if nature herself would not accomplish the delivery; and to my great joy in half an hour the pains became more regular and forcible, and on examination I found the head advancing with a pretty fair prospect of a hasty delivery. It was now just entering the brim of the pelvis, when profuse hæmorrhage came

on, the woman sunk rapidly from copious loss of blood, the pains ceased almost entirely, and indeed the case became alarming. I ordered her such remedies as appeared most pressingly indicated, and in the course of half an hour the hæmorrhage ceased, the woman revived, the uterus regained its wonted powers, and in fifteen minutes more she was delivered of a large healthy male child. The after birth seemed to be slightly adherent, but was soon delivered with little difficulty, and without much hæmorrhage. In short all things seemed to do well, excepting the uncommonly severe after pains, which led me to place my hand over the abdomen, when I was a little surprised to find it but slightly diminished in size, especially immediately over the region of the womb. This led to a still further examination, *per vaginam*, and to my utter astonishment I discovered a large resisting tumour firmly impacted in the uterus. Satisfying myself as to its character I did not examine as to its location, as the soft parts were very tender to the touch, and as the patient was very much enfeebled; nor was it necessary, as that was not the proper time to search for a pedicle or neck, or if its location were ascertained, to apply the ligature.

I gave such directions as I conceived the case required at the time, and left the lady with the fullest assurance that I would see her as often as circumstances would permit. Late in the afternoon of the day following, however, I was requested to visit her in haste, "as her pains have returned with increased violence;" but before I arrived she was spontaneously delivered of a polypus, weighing eleven ounces, without the slightest hæmorrhage.

The polypus is now in my possession. Its pedicle or stem is about an inch long and about two in circumference: it is similar to a fungous excrescence, and is covered by a thick membrane. It is full of large veins, and arteries, some of the former being varicose.

This is the 19th of June, 1843, and the lady has recovered entirely; and says she feels much stronger than she did during the four last months of her pregnancy. She also states that she was not aware of there being any thing wrong about her womb till after she was three months gone, at which time it seemed to be fuller than ordinarily at that stage of pregnancy: and there was also a slight vaginal secretion. These seem to be the only signs, of which she is aware, that could be considered as symptoms of the disease. She is of a stout, robust constitution; and her general health has been good from her infancy with slight exceptions.

The present case, it is conceived, has several points of interest;\* and if it should be worthy of your consideration, and a place in your able journal, it is at your service.

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*Effects of a large dose of Arsenic taken by a Lunatic.* By A. B. SHIPMAN, M. D., of Cortlandville, N. Y.

In the year 1838, a gentleman who had been insane two or three years, the cause of which was probably ill health from disorder of the digestive organs, acting upon a nervous temperament, took a teaspoonful of the white oxide of arsenic with a view of destroying himself. It was taken immediately after eating a hearty dinner, and washed down with a draught of water. Soon after, or within half an hour, he vomited freely, and in the

\* The above is merely a summary of the facts as they actually occurred, without comment.

course of the day a diarrhœa set in, which followed him a day or two. He then informed his medical attendant of what he had taken, and his regret and contrition at the act. All this time he experienced but little of what could be attributed to the poison, the diarrhœa was not attended with any thing peculiar, he had eaten his usual meals with a tolerable relish, and complained of no unusual burning or pain in the stomach and bowels. Within a week or so he was taken with severe pain in his legs and arms, which he described as most excruciating, the sensation he compared to the gnawing of rats, or the boring of a gimlet into the bones—there was some swelling of the legs and feet, but no preternatural heat. After the pain had continued some days, a partial paralysis of the limbs was observed. He took various medicines, mostly of the anodyne class, with stimulating liniments and frictions, which were persevered in for a length of time. The paralysis however remained obstinate for months. The strychnine was finally given, and continued several weeks. The paralysis gradually left him, and he regained his health and resumed his business as a merchant. But what was most curious to the physician, and to the patient of the most importance, was the complete restoration of his reason and ultimately his health. Previous to his insanity he was of a reserved and cautious disposition,—was taciturn, diffident, and exemplary in his conduct,—was on the point of contracting an eligible matrimonial engagement,—his pecuniary circumstances were unembarrassed. Yet all at once he became talkative, boisterous, and mirthful. Entered into speculations, contracted for farms and property which he did not want, supposed himself in possession of immense sums of money, and that his speculations would conduct him to boundless wealth. He insisted upon his marriage taking place immediately—invited every body he saw to attend his wedding. His marriage finally took place, as his friends imagined it might be a means of restoring him, or an exasperation of his malady a result of his wishes being thwarted. But these palmy days of ideal wealth and splendour soon wore away, and he sank down a gloomy, desponding, and dejected lunatic, unfit for business or society. He was however harmless, and lived with his wife for two or three years, attending to no business. He was in this state when he took what he imagined would be his last dose, but which in all probability was the means of restoring him to reason. Since that period, there has been no signs of insanity, and his health has been good since the removal of the paralysis from his limbs. He has resumed his business as a merchant, and conducts it judiciously and with success.

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*Extraordinary case of Monstrosity, consisting in a plurality of toes (seven) on each foot.* By R. C. MARTIN, M. D., of Wilkesboro, N. C.

Lowery Hawkins, ætat. 14, came to my office, from the country, on the 22d June, 1843, for the purpose of having two of his extra toes amputated—having on each foot an extra great and little toe, making 14 in all.

Lowery states that his mother (Sarah Hawkins) has six toes on each foot, and so distorted as to have prevented her from ever wearing shoes;

that she attributes her extraordinary vice of conformation, to the influence of maternal imagination during utero-gestation.

He says that he, also, has never been able to wear either socks or shoes, in consequence of which he suffers much during the winter season, and is very desirous to have the extra toes taken off. On examination I found that the supernumerary great toe on the right foot, came out or stood off at a right angle with the foot and toes (*see fig.*)—that it had, like a natural toe, two phalanges, but had no tendon or muscle extending to it, and of course the will had no influence on it; but what is more remarkable, the shape of the toe-nail, &c. had more the appearance of a thumb than a toe.

The extra great toe on the left foot differed from the right in coming out at a more acute angle, and having more the appearance of a natural toe. There was nothing peculiar about the extra little toes, except that they had no muscles extending to them. The feet were somewhat shorter and wider, particularly across the toes, than usual.

I amputated both of the great toes, on the morning of the 23d, at their articulations with their metatarsal bones; there was very little hemorrhage, and the patient did not suffer much pain from the operation.

The lips of the wounds were approximated and held in situ with adhesive strips; they healed partially by the first intention—the patient suffering little or no subsequent pain, and on the 4th of July he walked home, a distance of twelve miles, his feet being nearly or quite well, having on, for the first time in his life, shoes and stockings, and much gratified with the improved appearance of his feet.

Wilkesboro, N. C., Aug. 22d, 1843.



Extreme width from *a* to *b*, 5½ inches. Extreme length from *c* to *d*, 8½ in. Breadth of the plantar surface of the toes 4 inches, from *e* to *f*.

## DOMESTIC SUMMARY.

*Induction of Premature Labour, without Rupture of the Membranes.*—DR. HENRY G. CLARK reported to the Boston Society for Medical Improvement, Nov. 28, 1842, the following interesting case of induction of premature labour:—

"Mrs. S., æt. 30, from St. John, N. B., consulted me in May last; she was pregnant with her sixth child, and had always great difficulty in labour, only one of the five having been born alive, and that at 7 months, a female, now living, and 10 years of age.

"I had myself attended in her fourth confinement in 1837. I then found her to have a pelvis contracted in its conjugate diameter to less than 3 inches, by the projection of the promontory of the sacrum. She is short, of awkward figure, and has also lateral curvature of the spine. It became necessary to resort to perforation of the head at that time—delivery being otherwise impossible.

"At her last confinement, two and a half years since, she went to her native town, where, she informs me, it was thought proper by her attendants there, after three days sickness, to have recourse to the same measures. She did not recover from this for some months.

"It seemed to me that this was a proper case for the induction of premature labour. I therefore proposed it to her as the safest course for herself—as the